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Issues in Interstate Guardianship

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When an adult ward wishes to move to another state—with or without his or her guardian—problems can arise. In such a case, advocates for the elderly must understand guardianship laws in both locales.

By William P. Donaldson

> The sober comfort, all the peace which springs
> from the large aggregate of little things;
> On these small cares of daughter, wife, or friend,
> The almost sacred joys of home depend.[1]
>
> Hannah More (1745–1833)

Jimmie L. needed a guardian. According to the consensus of medical opinion and the order of a Dade County, Florida, court, that issue was not disputed. Why then was his case being reheard in a Wisconsin courtroom?[2] In essence, the issue that gave rise to this case was whether Jimmie L. was a resident of Florida or Wisconsin. The residency issue was necessary to determine whether Florida or Wisconsin should assume the costs of providing care for an incapacitated individual. Jimmie's misfortunes and subsequent judicial adventures present an interesting case study in interstate guardianship issues, or, as the law professors are wont to call it, a conflict of laws.

In 1991, Jimmie moved to Florida for an unspecified amount of time. He returned to Wisconsin during the summer of 1992. In June, Jimmie and his wife were divorced in Sauk County, Wisconsin. In late 1992, Jimmie returned to Florida to work, with plans to return to Wisconsin in the spring. He told his former wife, Teresa, that he had hopes of working and living close to his children upon his return.

During a Christmas Eve telephone call, he once again stated his desire to live in Wisconsin after his temporary job with the hurricane relief effort ended. Less than a month later, Jimmie suffered a catastrophic injury while on the job and was hospitalized in Miami. Due to his incapacitated state, a guardianship order was issued by the Dade County Court. As required by Florida law, the court had to determine whether the prospective ward was a resident of the State of Florida. Upon reaching the conclusion that Jimmie was a resident of Florida, the Dade County Guardianship Program was named his guardian.

Teresa decided to bring Jimmie back to Wisconsin to ensure that he was cared for by a facility close to home. She filed a petition under Wisconsin law[3] for guardianship and protective placement, seeking to have herself named as the guardian. Neither the Florida guardian nor Jimmie's relatives objected to this plan. However, the Sauk County Wisconsin human services agency viewed the move as "dumping," suggesting that Florida was simply trying to relieve itself of any

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financial liability for Jimmie's care. The county opposed the guardianship proceeding and succeeded in having the petitions dismissed in circuit court on grounds of nonresidency. The court concluded that because Jimmie had abandoned his Wisconsin residency when he left for Florida, he was not now a resident. In addition, the court concluded that the Wisconsin courts had to give full faith and credit to the findings of the Circuit Court of Dade County, Florida, determining that Jimmie was a resident of Dade County and within the jurisdiction of that court.

Teresa appealed to the Wisconsin Court of Appeals and, in an unpublished opinion,[4] the court reversed and remanded the case for further proceedings at the circuit court level. The court of appeals stated that the long-standing rule that a "temporary absence [from a state] with intent to return does not effect a change of residence."[5] In addition, evidence that had been previously presented at trial indicated that Jimmie had never recanted his stated intention to return to Wisconsin to be near his children and their mother. Furthermore, the court of appeals concluded that the circuit court had made no finding of fact to contradict this intention. As noted in *In re Newcomb's Estate*,[6] "while acts speak louder than words, the words are to be heard for what they are worth."[7] The court of appeals noted that the circuit court should have "applied the presumption that once a residence is established, it is presumed to continue until it is changed."[8] Jimmie was found to have continued his Wisconsin residence throughout the period of his absence. The finding of domicile is consistent with the Restatement (Second) of Conflict of Laws' view that physical presence of the proposed ward in the state of the forum is sufficient.[9]

In response to Sauk County's assertion based on application of the Constitution, the court of appeals stated that a "judgment has no constitutional claim to a more conclusive effect in the state of the forum than in the state in which it was rendered."[10] In other words, the Wisconsin courts have "at least as much leeway to disregard the judgment, to qualify it, or to depart from it" as do the Florida courts.[11] Because a Florida court could have altered the nature of the guardianship order, the Wisconsin courts are free to do so as well once the residency requirement is met. Here, the Florida court had included in the order a statement that "once the guardianship is established in Wisconsin. . . , the guardian may petition for discharge in this case."[12] The Florida court obviously recognized Jimmie as a person in need of immediate assistance who was ultimately destined to return to his home at some future date. The court made a provision for this eventuality, assuming that Wisconsin would welcome the return of one of its residents.

The case was remanded to the circuit court, and there the judge granted Teresa's petition for guardianship and protective placement. Jimmie was home. The county filed a second appeal[13] seeking a retrial based on evidence suggesting that at some point before he left Wisconsin for Florida, Jimmie had been a resident of Rock County, Wisconsin. Sauk County's second appeal was denied on the grounds that the presumed intent to return to his family's home was not overcome in the first trial and this new evidence would not change that fact. Even if proven that he had lived in Rock County at some time before going to Florida, it was his consistent stated intent to return to Sauk County. "[T]he critical period for establishing Jimmie's residency was just before he left Sauk County for temporary hurricane relief work in Florida, and the other critical fact was his clearly stated intent to reside in Sauk County."[14]

Using the Uniform Enforcement of Foreign Judgments Act

Although Jimmie's case is not unique in demonstrating that changing the residence of an adult ward raises potential problems, it is certainly not the only difficult situation that may arise in determining guardianship. Jimmie's case involved a guardian appointed in one state who wanted to move the ward and relinquish control to a (perhaps) more appropriate guardian in another state. What if the issue involved a ward and guardian who both wanted to relocate?

Under the Uniform Enforcement of Foreign Judgments Act,[15] a judgment in one state that would be entitled to full faith and credit in another state may be enforced by the courts of the second state if a copy of the judgment is filed with the local court. This assumes that the judgment was valid in the original forum and that there is no policy reason for denying the enforcement in the receiving state.

The principle underlying the uniform law originated in *Adkins v. Louck.*[16] In *Adkins*, the court referred to then-current Wisconsin statutes that afford a guardian appointed in another state the authority to act in Wisconsin to the extent the guardianship order does not conflict with Wisconsin law. The guardian was required to file a copy of the order of the foreign court with the Wisconsin circuit court in order to claim the authority granted by the foreign jurisdiction.

In *Coughlin v. Baxter,*[17] the Oregon Court of Appeals addressed an issue of validity of the original state jurisdiction in a guardianship case. An Oregon resident had moved to Washington, leaving her automobile in the care of friends. While in Washington, the individual was determined to be incompetent by a Washington court and was placed under guardianship with a Washington resident as guardian. In the course of the proceedings, the Washington court issued an order to the Oregon residents who were keeping the ward's automobile to release it to the guardian on payment of $300 to cover the costs of storage. The guardian filed the order with the Oregon court, but the Oregon residents objected. The Oregon trial court agreed that the Washington court had no *in personam* jurisdiction over the Oregon residents and set aside the filing. Because the original transaction had occurred in Oregon and because the Oregonians had no contact with Washington relating to the storage of the automobile, there was no basis for the Washington court to order them to comply. In essence, the Uniform Enforcement of Foreign Judgments Act cannot validate a judgment that was ineffective to begin with.

A second pitfall in using the Uniform Enforcement of Foreign Judgments Act is demonstrated in *Forehand v. American Collection Service.*[18] In this case, a valid order of a foreign court was filed in the wrong forum of the home state. An Oklahoma court issued an order directing payment from the guardianship account of an Arkansas resident. American Collection filed that order with the circuit court of the ward's home county in Arkansas. Having apparently fulfilled the requirements for enforcement, American proceeded to the bank where the guardianship account was held and requested payment. The bank officer denied payment, saying that only an order of the probate court would be honored in a guardianship matter. The court noted that though "state or federal courts may entertain suits to adjudicate claims against an estate, and those adjudications must be respected by the probate court, it is nevertheless only the probate court which can allow such claims."[19]

Considering the multitude of variations in authority granted to, requirements imposed on, and procedures to be followed by guardians in the various states, exclusive reliance on the Full Faith and Credit Clause or the Uniform Enforcement of Foreign Judgments Act to permit uncomplicated movement from hither to yon would seem misplaced.

In Wisconsin, a ward residing in a nursing home must have a concurrent order of protective placement[20] under Chapter 55 of the Wisconsin Statutes. A guardianship order from another state may be recognized by filing in the proper court. However, if the ward is going to be placed in a residential long-term care facility, a Chapter 55 hearing and order must be obtained in probate court. Hypothetically, if a guardian named in an order issued by a sister state were to transport his or her ward into Wisconsin for skilled nursing facility care, the ward would technically not be permitted admission to a facility until a probate court issued a protective placement order. Despite the fact that the guardianship order may have permitted placement in the original state, the guardianship order alone cannot overcome Wisconsin's additional requirement of a protective placement proceeding and order. The requirement of a protective placement hearing (and subsequent annual reviews of the appropriateness of continued placement) is a protection afforded to all Wisconsin wards, including those who are transported into the state by their guardians from other parts of the country.

Similarly, Wisconsin guardians are required by statute[21] to file an annual report of the guardianship with the court. If a guardian appointed in another state with perhaps a less rigid requirement for court oversight of the relationship moves to this jurisdiction, he or she will be required to conform to Wisconsin law in this as in every other respect.

Conclusion

Americans are a mobile people. Historically, the ability to move about the country has been a cherished right that has been jealously guarded. It would seem contrary to this principle—and indeed to public policy—for a ward to lose the right to relocate simply by virtue of his or her incompeten-

cy. In addition, if a ward has moved to a different state, the variations in law and the potential for changes in the ward's condition or circumstance make necessary the ability of sister states to assume jurisdiction over guardianship proceedings of persons who are now resident but who were adjudicated incompetent elsewhere.

Perhaps a more practical concern for a practitioner is the issue of family disharmony. It is an unfortunate fact that not all families are consistent in their regard for their loved one's welfare. As with children in divorce, occasionally wards become pawns in a family struggle. Issues such as who the guardian is, who has the "real" power, or who will get the inheritance can precipitate monumental conflict. This conflict can be a stimulus for the removal (or attempted removal) of a ward to another venue. Similarly, a nonfamily guardian may seek to change the ward's residence for a variety of reasons, including ease of estate administration and variations in the guardian's ability to place the ward.

Advocates for the elderly and disabled are often asked to assist in protecting individuals' rights from potential violation by inappropriate use of the guardianship process. In this context, the advocate must understand and be conversant with the issues and principles underlying the local laws related to guardianship law. It is also imperative that the advocate be aware of the possible pitfalls that may be encountered when a ward and his or her guardian move from one state to another without full understanding of the guardianship laws of their new home.

Guardianship is designed to protect the interests of the ward, not to make life simpler for the guardian. Because states have varied policies governing the process of obtaining and administering a guardianship, it is a primary responsibility of the appointed guardian to assure that the continuity and effectiveness of the guardian's authority is not compromised by a transfer of residence from one state to another.

Endnotes

1. OXFORD DICTIONARY OF QUOTATIONS 357 (3d ed. 1980).
2. *See* In the Matter of the Guardianship and Protective Placement of Jimmie L. v. Sauk County, 514 N.W.2d 424 (Wis. Ct. App. 1993), 1993 WL 538272 at *1.
3. *See* WIS. STAT. § 880.03 (1997); *see also* WIS. STAT. § 880.07(2) (1997) (indicating that in a case where a ward is to be cared for in a nursing facility, a concurrent protective placement order is required).
4. *See* Sauk County, 1993 WL 538272 at *1.
5. *Id.* at *3.
6. 84 N.E. 950 (N.Y. 1908).
7. *Id.* at 955.
8. Sauk County, WL 538272 at *4.
9. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 79 (1988 Supp.).
10. Sauk County, WL 538272 at *5 (quoting New York ex. rel. Halvey v. Halvey 330 U.S. 610 (1947)).
11. *Id.* at *5.
12. *Id.*
13. *See* In the Matter of the Guardianship and Protective Placement of Jimmie L. v. Sauk County, 546 N.W.2d 578 (Wis. App. 1996), 1996 WL 10120 at *1.
14. *Id.* at *2.
15. *See* WIS. STAT. § 806.24 (West 1999).
16. *See* 83 N.W.2d 934 (Wis. App. 1902).
17. *See* 778 P.2d 997 (Or. App. 1989).
18. *See* 819 S.W.2d 282 (Ark. 1991).
19. *Id.* at 283.
20. *See* WIS. STAT. § 55.06 (West 1999).
21. *See* WIS. STAT. § 880.07 (West 1999).